

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES, et al.,)
Plaintiffs,)
v.)
GOOGLE LLC,)
Defendant.)
No. 1:23-cv-00108-LMB-JFA

PLAINTIFFS' RESPONSE TO GOOGLE'S STATUS REPORT

Plaintiffs file this response to Google’s Status Report, ECF No. 1511, to briefly address three issues that the Status Report implicates.

First, Google’s Status Report demonstrates that Google has now exhausted all its avenues for reconsideration and appeal within the EC’s Directorate-General for Competition, leaving in place the Case Team’s determination that EU law does not prohibit Google from producing the materials that Plaintiffs have requested. In these circumstances, the Court indicated that it “want[s] to deal with the issue of whether [the requested material is] going to be produced,” and specifically would like “modest” additional briefing about whether the material Plaintiffs request under RFP No. 2 “should be produced given [Google’s] argument” that the materials constitute “settlement discussions.” See Hr’g Tr. at 52:5-18, 53:9-15 (June 20, 2025).

Second, Plaintiffs respectfully request a ruling on the pending discovery dispute as soon as possible because it continues to impact other ongoing discovery. For example, on Wednesday, June 25, defense counsel instructed a Google employee not to answer deposition questions solely based on the present discovery dispute. Ex. 1 (Craycroft Dep.) at 57–60, 348–56. As Google counsel acknowledged, the instructions not to answer were neither “necessary to preserve a

privilege” nor “to enforce a limitation ordered by the court.”¹ Fed. R. Civ. P. 30(c)(2); *see also* Ex. 1 at 59 (Google counsel conceding his instructions were not based on privilege). Plaintiffs believe these instructions were improper, but Google appears to contend that resolution of the pending discovery dispute is required to ascertain whether the deposition in question may be reopened. Plaintiffs are working diligently to complete this important discovery before the initial round of expert reports is due on July 7, and Plaintiffs expect that Google employees will receive similar instructions at depositions scheduled to occur on July 1 and July 18.

Third, Google’s offer in its status report to produce “non-settlement materials responsive to RFP 2,” ECF No. 1511 at 2, is inconsistent with its prior representations and is a proposal Google did not share with Plaintiffs before filing its Status Report. Google previously represented that [REDACTED]

[REDACTED]
[REDACTED] ECF No. 1494 at 25.

Indeed, Google said that the materials Plaintiffs request, [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 25. Assuming those prior Google representations to the Court were accurate, accepting Google’s proposal would not help resolve the present dispute. It is, at best, an offer to make a selective disclosure of pro-Google statements, and it would not include the assessments of remedy feasibility that Plaintiffs seek.

¹ Google has also never presented or stated an intent “to present a motion under Rule 30(d)(3).” *See* Fed. R. Civ. P. 30(c)(2).

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